United Nations CAT/C/BEL/CO/3

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the third periodic report of Belgium*

1. The Committee against Torture considered the third periodic report of Belgium (CAT/C/BEL/3) at its 1182nd and 1185th meetings (CAT/C/SR.1182 and 1185), held on 5 and 6 November 2013, and adopted the following concluding observations at its 1201st meeting (CAT/C/SR.1201), held on 18 November 2013.

A. Introduction

2. The Committee welcomes the third periodic report of the State party, prepared in compliance with the new optional reporting procedure under which a list of issues is established by the Committee.

3. The Committee appreciates the quality of its dialogue with the State party's high-level delegation and of the responses provided orally to the questions and concerns raised during the consideration of the report.

B. Positive aspects

4. The Committee takes note with satisfaction of the State party's ratification of or accession to the following instruments since the consideration of its second periodic report:

(a) The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, on 8 March 2013;

(b) The International Convention for the Protection of All Persons from Enforced Disappearance, on 2 June 2011;

(c) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, on 2 July 2009;

(d) The Council of Europe Convention on Action against Trafficking in Human Beings, on 27 April 2009.

* Adopted by the Committee at its fifty-first session (28 October–22 November 2013).

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5. The Committee welcomes the efforts made by the State party to amend its legislation in areas related to the Convention, including:

(a) The Act of 13 August 2011, which amends the Code of Criminal Investigation and the Pretrial Detention Act of 20 July 1990 in such a way as to grant certain rights, including the right to consult and be assisted by a lawyer, to all persons being questioned and all persons deprived of their liberty (the "Salduz law");

(b) The Act of 12 September 2011, which amends provisions in the Foreign Nationals Act of 15 December 1980 relating to the issuance of temporary residence permits to unaccompanied foreign minors.

6. In addition, the Committee welcomes the State party's efforts to amend its policies, programmes and administrative procedures in order to give effect to the Convention, including:

(a) The 2012–2014 action plan to combat human trafficking and the smuggling of human beings;

(b) The 2010–2014 national action plan to combat violence within couples and other forms of domestic violence;

(c) The 2008–2012–2016 master plan for the reduction of prison overcrowding.

7. The Committee takes note with satisfaction of the information provided by the delegation on cooperation with the Extraordinary African Chambers established within the courts of Senegal to try Mr. Hissène Habré.

C. Principal subjects of concern and recommendations

Definition of torture

8. While taking note of the explanations given by the State party in its report and during the dialogue, the Committee is of the view that article 417 bis of the Criminal Code, which defines torture, still does not include all the elements of the definition of torture set forth in article 1 of the Convention, such as acts of torture committed by a third person at the instigation of or with the consent or acquiescence of a public official or acts of torture motivated by discrimination of any kind (art. 1).

The Committee reiterates its earlier recommendation (CAT/C/BEL/CO/2, para. 14), adopted in November 2008, and requests the State party, as a matter of priority, to amend article 417 bis of the Criminal Code so that its legal definition of torture incorporates all the elements contained in article 1 of the Convention. In the light of its general comment No. 2 (2007) on the implementation of article 2 by States parties, the Committee considers that, by defining the offence of torture in accordance with the definition in the Convention, States parties will directly advance the Convention's overarching aim of preventing torture.

National human rights institution

9. The Committee welcomes the State party's commitment to establish a national human rights institution and the creation of a working group for that purpose. It regrets, however, that there is no national institution for the promotion and protection of human rights that has been accredited with "A" status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC). It notes that progress towards the establishment of such an institution remains limited and that consultations with civil society actors have yet to be held (art. 2).

The Committee urges the State party to expedite the establishment of a national human rights institution in accordance with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles) by conferring the broadest possible mandate for the promotion and protection of human rights on the institution and ensuring that it is autonomous, independent and pluralistic. The Committee encourages the State party to actively involve civil society actors in this process.

Ratification of the Optional Protocol to the Convention

10. While taking note of the explanations provided by the State party during the dialogue, the Committee regrets that the process involved in ratifying the Optional Protocol to the Convention has not advanced in recent years. Furthermore, the Committee remains concerned about the lack of systematic, effective and independent monitoring and inspections of all places of detention (art. 2).

The Committee invites the State party to take the necessary measures to ratify the Optional Protocol to the Convention with a view to putting in place a system of regular, unannounced visits by national and international observers for the purpose of preventing torture and other cruel, inhuman or degrading treatment or punishment.

Fundamental legal safeguards

11. While applauding the adoption of the "Salduz law", which affords greater protection for the rights of persons from the moment that they are placed in custody, the Committee remains concerned that the right of access to a lawyer is effective only from the time persons are first questioned by the police rather than as soon as they are placed in custody, that private consultations with a lawyer are limited to 30 minutes, which is all the more restrictive for persons who are detained, and that, in practice, there are limitations on this right in respect, for example, of lawyers' prompt access to case files. In addition, the Committee notes that the right to be examined by an independent physician and the right to contact family members or other persons of the detainee's choice are restricted and that persons are informed of their rights in writing, without any explanation, which makes it difficult for some persons who have been deprived of their liberty to understand them (arts. 2 and 11).

The Committee recommends that the State party take effective steps to ensure that all persons who are held in custody actually have the benefit, from the very outset of their deprivation of liberty, of all the fundamental legal safeguards, namely, the right to be informed in an appropriate language of the reasons for their detention, the right to have prompt access to a lawyer and to consult him or her immediately following their detention, the right to contact family members or other persons of their choice and the right to have an independent medical examination performed without delay by a doctor of their choice.

Register of persons in police custody

12. The Committee notes with concern that the general register of persons held in police custody provided for in article 33 bis of the Police Functions Act has not yet been introduced. The Committee also regrets that, according to the information provided by the State party in its report, each police district has created its own register, which does not always contain enough information to make it possible to ensure that detainees' rights are respected (arts. 2 and 11).

The Committee reiterates its earlier recommendation (CAT/C/BEL/CO/2, para. 20) and urges the State party to take appropriate measures to establish a standardized,

computerized and centralized official register in which arrests are immediately and scrupulously recorded, along with, as a minimum, the following information: (i) the time of the arrest and detention; (ii) the reason for detention; (iii) the name(s) of the arresting officer(s); (iv) the location where the person is detained and any subsequent transfers; (v) the names of the officers responsible for that person while in custody; and (vi) whether the detainee had any signs of injury at the time of detention. The State party should carry out monitoring and inspections on a systematic basis in order to ensure compliance with this obligation in line with the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (General Assembly resolution 43/173 of 9 December 1988).

Use of force by law enforcement officials and immediate, thorough and impartial investigations

13. The Committee takes note with concern of reports that, in some cases, law enforcement officials use excessive and unjustified force during questioning or arrests. The Committee deeply regrets the fact that Jonathan Jacob reportedly died in a cell at the Mortsel police station on 6 January 2010 after being subjected to physical violence by police officers. The Committee also deeply regrets the fact that, three years after the event, the investigation has not been concluded and the perpetrators have not been brought to justice and therefore remain unpunished. The Committee takes note with concern of reports that judicial sanctions imposed upon police officers who are found guilty of acts of torture or ill-treatment are often symbolic and not commensurate with the seriousness of the acts in question. Despite the efforts of the State party to strengthen the independence of the Standing Committee for Police Monitoring (Committee P) and its Investigation Service, the Committee remains concerned by the fact that some of the investigators are former police officers, which may compromise their impartiality when they are required to conduct objective and effective investigations into allegations that acts of torture and ill-treatment have been committed by members of the police (arts. 2, 12, 13, and 16).

The State party should:

(a) Conduct prompt, thorough, effective and impartial investigations into all alleged cases of brutality, ill-treatment and excessive use of force by law enforcement personnel, and prosecute and sanction officials found guilty of such offences with appropriate penalties;

(b) Provide detailed information on the investigation into the case of Jonathan Jacob;

(c) Set up a fully independent mechanism for the investigation of allegations of torture and ill-treatment and establish a specific register of allegations of torture and cruel, inhuman or degrading treatment or punishment;

(d) Ensure that law enforcement officials receive training on the absolute prohibition of torture and that they abide by the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;

(e) Take appropriate measures to further strengthen supervision and monitoring mechanisms for the police force, particularly Committee P and its Investigation Service, which should be composed of independent experts recruited from outside the police.

Complaint mechanisms in prisons and closed centres

14. The Committee notes with concern that the Principles Act of 12 January 2005, which deals with prison administration, the legal status of prisoners and the right to

complain to an independent body, has not yet entered into force. The Committee further notes the explanations given by the State party as to how the Complaints Commission functions in closed centres, but remains concerned that foreigners often have difficulties in filing complaints and that no decision on the merits is adopted when the complainant has been expelled (arts. 12, 13 and 16).

The Committee invites the State party to take measures to implement the provisions of the Principles Act aimed at establishing an effective, independent complaints mechanism specifically devoted to monitoring and processing complaints in detention centres. The State party should take the necessary measures to ensure that all allegations of misconduct by detention centre and prison staff are duly examined and thoroughly and impartially investigated.

Conditions of detention

15. The Committee welcomes the measures taken by the State party to reduce prison overcrowding, such as the adoption of a master plan that provides for the renovation and expansion of existing prisons and the establishment of new prison facilities. However, the Committee is concerned that some detention centres have an overcrowding rate of over 50 per cent, which breeds violence between prisoners and leads to the frequent use of force by custodial staff. The Committee is also concerned about the poor sanitary conditions, inadequate access to health care, the lack of medical personnel in several places of detention and the failure to separate convicted prisoners from remand prisoners and adults from minors. It regrets that poor working conditions have led prison staff to go on strike, which has had a harmful impact on conditions of detention (arts. 11, 12, 13 and 16).

The Committee recommends that the State party:

(a) Step up its efforts to alleviate overcrowding in prisons and other places of detention by, in particular, making use of non-custodial measures as provided for in the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);

(b) Continue to improve the infrastructure of prisons and other places of detention and ensure that conditions of detention in the State party do not breed violence among prisoners;

(c) Separate the different categories of prisoners, ensuring that remand prisoners are separated from convicts and that minors are separated from adults;

(d) Take the necessary measures to improve working conditions for prison staff and to ensure a level of service in prisons that will ensure that prisoners' fundamental rights are respected, even in the event of a strike.

Full body searches

16. The Committee is concerned about the amendments made to the Principles Act by the Act of 1 July 2013, which authorizes routine full body searches when a detainee has been in contact with the outside world. Although the Constitutional Court has ruled that the application of these measures should be suspended, the Committee is still concerned that they have not yet been repealed and could be implemented in the future (art. 11).

The Committee urges the State party to repeal the provisions of the Act of 1 July 2013 which authorize systematic body searches. The State party should ensure that body searches are conducted only in exceptional cases and by the least intrusive means possible, with full respect for the dignity of the person. The State party should take steps to adopt precise and strict instructions to restrict the use of body searches.

Training for public officials regarding the absolute prohibition of torture

17. The Committee takes note of the information provided by the State party in its report and during the dialogue concerning the training sessions, seminars and courses on human rights organized for judges, prosecutors, police officers, prison officials and members of the military. Nonetheless, the Committee is concerned by the absence of a direct reference to the Convention and to the prohibition of torture in training courses for members of the national police force, as well as in other training courses for civil servants and public and administrative officials. Recalling its previous concluding observations (CAT/C/BEL/CO/2, para. 15), the Committee also regrets that the Police Service Code of Ethics does not yet explicitly prohibit torture and that no mention is made of the sanctions to which police officials may be liable if they fail to meet their obligations (arts. 2, 10 and 16).

The State party should further develop and strengthen training programmes to ensure that all officials, above all judges and law enforcement officials, members of the military and prison personnel, are familiar with the provisions of the Convention and, in particular, that they are fully aware of the absolute prohibition of torture. Furthermore, all relevant personnel, including health-care professionals, who are in contact with prisoners and asylum seekers should receive specific training on how to identify signs of torture and ill-treatment. This should include an introduction to the use of the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). In addition, the State party should develop evaluation mechanisms to assess the effectiveness and impact of such training and educational programmes. The Committee also invites the State party to take the necessary steps to include an explicit prohibition of torture in the Police Service Code of Ethics and to ensure that police officers observe the absolute prohibition of torture when performing their duties.

Agreement between the State party and the International Committee of the Red Cross (ICRC)

18. The Committee takes note that in April 2010 the State party reached an agreement in principle with ICRC to allow ICRC staff to visit persons detained in connection with the fight against terrorism and to evaluate their conditions of detention or internment. It regrets, however, that the agreement is not yet operational (arts. 2, 11 and 16).

The Committee encourages the State party to make the agreement with ICRC operational as soon as possible in order to enable this international humanitarian organization to objectively evaluate the conditions of detention of persons held in connection with the fight against terrorism.

Mental health care for detainees

19. The Committee reiterates its concern about the conditions in which inmates with serious mental health problems are held in the State party's prison system. The Committee regrets that the mental health services available in prisons remain inadequate owing to the lack of qualified staff and suitable facilities (arts. 11 and 16).

The Committee recalls its previous recommendation (CAT/C/BEL/CO/2, para. 23) and invites the State party to take all the measures necessary to ensure that detainees with mental health problems receive suitable care. To this end, the State party should increase the capacity of its psychiatric hospital services and facilitate access to mental health services in all prisons.

Expulsions

20. While taking note of the information provided by the State party about the supervision of expulsions by the Inspectorate-General of the Federal and Local Police (AIG), the Committee remains concerned that this body may lack the human and financial resources it would need to carry out its mandate. It is also concerned by reports that the staff involved in expulsions are actually police officers on secondment. Moreover, the Committee is concerned by reports that excessive means of restraint are used during expulsions, which stands in contrast with the small number of complaints received by AIG. The Committee also regrets that non-governmental organizations (NGOs) still have only limited access to expulsion operations and that oversight mechanisms, such as video recordings, have not yet been set up (art. 3).

The Committee requests the State party to take the necessary measures to strengthen the independence, impartiality and efficiency of AIG, in particular by providing it with appropriate means to monitor expulsions and by giving it the necessary means to receive and consider complaints. The Committee reiterates its previous recommendation (CAT/C/BEL/CO/2, para. 6) and requests the State party to take measures to enhance oversight, such as the use of video recordings and monitoring by NGOs. The Committee recommends that the State party take effective measures to restrict the use of means of restraint during expulsion operations.

Administrative detention of asylum seekers

21. The Committee commends the State party for its efforts in respect of asylum and refugees, which have included the use of alternatives to detention for families with children who are seeking asylum. However, the Committee remains concerned by reports that, as a result of the application of the Dublin II Regulation, asylum seekers are systematically detained for the entire duration of the asylum procedure and by the information provided by the State party during the dialogue, according to which, asylum seekers may be deprived of their liberty for as long as 9 months in such cases (arts. 11 and 16).

The Committee urges the State party to ensure that the detention of asylum seekers is used only as a last resort and, where necessary, for as short a period as possible and without excessive restrictions. It also urges the State party to establish and use arrangements other than the detention of asylum seekers.

Non-refoulement and the risk of torture

22. The Committee is concerned by the fact that the State party's existing extradition and refoulement procedures make it possible to extradite a person who is at risk of being tortured if the State party has obtained diplomatic assurances (art. 3).

The Committee recalls its position that States parties may in no circumstances rely on diplomatic assurances rather than observing the principle of non-refoulement, which may alone serve as a guarantee of adequate protection against the risk of torture or ill-treatment when there are substantial grounds for believing that a person would be in danger of being subjected to torture. In order to determine the applicability of the obligations it has assumed under article 3 of the Convention, the State party should thoroughly examine the merits of each individual case, including the overall situation with regard to torture in the country concerned.

Measures of redress and compensation for victims of torture or ill-treatment

23. The Committee is concerned about the lack of information on the number of claims for compensation made by victims of acts of torture or ill-treatment and on the compensation awarded to victims. The Committee also regrets the absence of information

on the measures taken by the State party to provide rehabilitation for the victims of torture or ill-treatment (art. 14).

Recalling its general comment No. 3 (2012) on the application of article 14 by States parties, the Committee recommends that the State party ensure that all victims of acts of torture or ill-treatment can fully exercise their right to redress and receive the means necessary for their full rehabilitation.

Use of confessions obtained as a result of torture

24. While taking note of the adoption of the Act of 24 October 2013, which amends the Code of Criminal Procedure with regard to the invalidity of evidence obtained improperly, the Committee remains concerned that the Act does not contain an explicit provision on the inadmissibility of evidence obtained as a result of torture (art. 15).

The Committee urges the State party to amend its legislation so that statements obtained as a result of torture or ill-treatment may not be used or invoked as evidence in any proceedings, except as evidence against the person accused of torture.

Administration of juvenile justice

25. The Committee continues to be concerned that, under the law, children aged 16 to 18 who are in conflict with the law may be tried as adults and, if convicted, held in prisons for adults. The Committee is also concerned by the sluggishness of certain judicial procedures (art. 11).

The Committee recalls its previous recommendation (CAT/C/BEL/CO/2, para. 17) and requests the State party to establish a system of juvenile justice that fully conforms to the provisions of the Convention on the Rights of the Child, in law and in practice, and to ensure that persons under the age of 18 are not tried as adults. The Committee recommends that the State party take the necessary steps to speed up judicial procedures.

Use of electroshock weapons

26. Despite the State party's clarifications concerning current legislation on the use of force by the police and concerning the rules and conditions for the use of Tasers by police officers, the Committee remains concerned by the fact that the use of such weapons is not subject to thorough supervision (arts. 2, 11 and 16).

The State party should ensure that electroshock weapons are used only under extreme circumstances as an alternative to lethal weapons, as, for example when there is a real and immediate threat to life or a risk of serious injury. The State party should also ensure that these weapons are only used by duly qualified personnel. The Committee is of the opinion that the use of electroshock weapons should be subject to the principles of necessity and proportionality and should not be a permissible part of the equipment provided to warders in prisons and other places of deprivation of liberty. The Committee recommends that the State party strictly supervise and monitor the use of these weapons and step up its efforts to ensure observance of the rules and conditions for their use by law enforcement officials.

Corporal punishment

27. While taking note of the awareness-raising campaigns organized to prevent violence against children, the Committee notes with concern that the State party has not yet adopted specific legislation expressly prohibiting corporal punishment under all circumstances, particularly in the family and non-institutional childcare settings (arts. 2 and 16).

The Committee recommends that the State party expressly prohibit corporal punishment of children in all settings, and, as a matter of priority, in the family and non-institutional childcare settings.

Other issues

28. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet a party, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

29. The State party is requested to disseminate widely the report submitted to the Committee and the Committee's concluding observations, in the appropriate languages, through official websites, the media and non-governmental organizations.

30. The Committee requests the State party to provide information by 22 November 2014 on the follow-up to the Committee's recommendations on: (a) introducing or strengthening legal safeguards for persons held in custody; (b) promptly conducting effective, impartial investigations; (c) proceedings against suspects and the penalties handed down to the perpetrators of ill-treatment; and (d) establishing a central policy custody register and a complaint mechanism in prisons and closed centres (see parasgraphs 11, 12, 13 and 14 above).

31. The State party is invited to submit its fourth periodic report by 22 November 2017. For that purpose, the Committee will submit a list of issues prior to reporting to the State party in due course, since the State party has agreed to report to the Committee under the Optional Protocol procedure.